AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 534. 230.

WILLIAM L. SNYDER, EXECUTOR OF DAVID L. SNYDER, DECEASED, PLAINTIFF IN ERROR,

vs.

BERNARD BETTMANN, COLLECTOR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED JANUARY 31, 1902.

(18,387.)

(18,387.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 534.

WILLIAM L. SNYDER, EXECUTOR OF DAVID L. SNYDER, DECEASED, PLAINTIFF IN ERROR,

vs.

BERNARD BETTMANN, COLLECTOR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

INDEX.

	Original.	Print.
Caption ..... (omitted in printing)..	1	—
Petition ..... (" ")..	1	—
Præcipe for summons ..... (" ")..	10	—
Summons ..... (" ")..	10	—
Marshal's return ..... (" ")..	11	—
Order granting leave to file amended petition, etc. (omitted in printing) ...	12	—
Amended petition	12	1
Demurrer to amended petition	16	3
Opinion on demurrer	16	3
Judgment	18	4
Petition for writ of error	19	4
Assignment of errors	20	5
Order allowing writ of error ..... (omitted in printing)..	22	—
Bond on writ of error ..... (" ")..	23	—
Clerk's certificate ..... (" ")..	25	—
Writ of error ..... (" ")..	26	—
Citation ..... (" ")..	27	—
Proof of service of citation ..... (" ")..	28	—
Statement of errors and stipulation as to printing record	30	6

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 22, 1902.

* * * * * * *

1-12 And afterwards, to wit, on the 3rd day of December, A. D. 1900, the following amended petition was filed in the clerk's office of said court clothed in the words and figures following, to wit:

WM. L. SNYDER, Executor of David L. Snyder, Deceased, Plaintiff,
vs.
BERNARD BETTMANN, Collector, Defendant.
} No. 5375.

Amended Petition.

13 The plaintiff, having first obtained leave of the court, files this his amended petition herein, and says:

That he is the duly appointed, qualified and acting executor of the last will and testament of David L. Snyder, deceased, late of Clark county, Ohio, which last will and testament has been duly admitted to probate in said county, and is recorded, in vol. — page — of the wills records thereof.

That the defendant is the duly appointed, qualified and acting collector of the United States internal revenue for the first district of the State of Ohio.

The plaintiff further says that the said David L. Snyder died seized, among other real and personal property, of two hundred thousand ($200,000.00) dollars face value of United States Government bonds which were, at the date of the death of the testator, and also on April 20th, 1899, of the market value of two hundred and twenty thousand ($220,000.00) dollars, at which sum the same were appraised upon the inventory of the said David L. Snyder's estate; and in and by his said last will and testament the said David L. Snyder did give and bequeath unto the city of Springfield, a municipal corporation of the State of Ohio, authorized by the laws of Ohio to accept such bequest, said two hundred thousand ($200,000.00) dollars face value of United States Government bonds, in trust for purposes of purely public charity, to wit: in trust to manage and invest the principle thereof in such manner as the laws of Ohio direct, or might direct, in case of guardians of minors; and to use and expend the net income arising from said trust, in the maintenance, improvement and beautifying of the public park of said city, known as Snyder park, including any extensions
14 thereof which said city might otherwise acquire; and the said bequest has been duly accepted by the said city.

Plaintiff further says that the said defendant, as collector, demanded of the plaintiff, among other taxes, taxes on the said bequest to the city of Springfield under and by virtue of section- 29, 30 and 31 of an act of the Congress of the United States, approved June 13th, 1898, and entitled "An act to provide ways and means to meet war expenditures and for other purposes;" which said taxes

so demanded of the plaintiff by the said defendant amounting to twenty-seven thousand, five hundred ($27,500.00) dollars, being at the rate of 12½ % on the said value of the said bequest to the city of Springfield, have been paid by the plaintiff.

The said defendant has since refunded to the plaintiff five thousand five hundred ($5,500.00) dollars of the amount so wrongfully collected; but still retains the sum of twenty-two thousand ($22,000.00) dollars thereof.

The plaintiff before the payment of said taxes, or any part thereof, duly protested against the payment of the same or any part thereof, upon the grounds, among others, hereinafter more specifically set forth; but his said protest was denied, both by said collector and by the Commissioner of U. S. Internal Revenue, to whom the same was referred; and thereafter upon the 20th day of April, 1899, the said plaintiff under protest paid to the said defendant as collector, among other taxes the said sum of twenty-seven thousand, five hundred ($27,500.00) dollars as taxes upon the bequest aforesaid.

Immediately after making the payment aforesaid the plaintiff duly prepared and submitted to the Commissioner of the United States Internal Revenue, a claim in writing for the refunder of the same, and of each and every part thereof, upon the grounds,
15 among others, hereinafter specifically set forth; but the said claim of the plaintiff for refunder has been rejected and denied by the said Commissioner of Internal Revenue to the extent of the said sum of twenty-two thousand ($22,000) dollars, still retained as aforesaid.

The plaintiff further says that the said sum of twenty-two thousand ($22,000) dollars so retained, and each and every part of the same, was illegally collected by the said defendant for the reason that the Congress of the United States has no authority under the Constitution to impose any tax or burden upon the said city of Springfield, nor upon its exercise of the right to take said bequest under the will aforesaid, nor upon the said bequest to the said city of Springfield or any part thereof.

Wherefore the plaintiff prays judgment against the said defendant as collector for the sum of twenty-two thousand ($22,000.00) dollars with interest thereon from the 20th day of April, 1899.

By BOWMAN & BOWMAN,
His Attorneys.

STATE OF OHIO, }
Clark County, } ss:

Wm. L. Snyder being first duly sworn says that he is the executor of David L. Snyder, deceased, the plaintiff in the foregoing action, and that the facts stated in the foregoing amended petition are true as he verily believes.

W. L. SNYDER.

Sworn to before me and subscribed in my presence, this 28th day of November, 1900.

E. O. BOWMAN.

16 And afterwards, to wit, on the 3rd day of December, A. D. 1900, the following demurrer was filed in the clerk's office of said court clothed in the words and figures following, to wit:

Demurrer.

WM. L. SNYDER, Executor of David L. Snyder, Deceased, Plaintiff,
vs.
BERNARD BETTMANN, Collector, Defendant. } Demurrer.

The defendant demurs to the amended petition filed herein, for the reason that the same does not state facts sufficient to constitute a cause of action.

WM. E. BUNDY,
Attorney for Defendant.

And afterwards, to wit, on the 28th day of December A. D. 1901, the following opinion was filed in the clerk's office of said court clothed in the words and figures following, to wit:

On Demurrer to Amended Petition.

WILLIAM L. SNYDER, Executor of David L. Snyder, Deceased, Plaintiff,
vs.
BERNARD BETTMANN, Collector, Defendant. } No. 5375.

17 David L. Snyder bequeathed to the city of Springfield, Ohio $200,000, in United States Government bonds, "in trust to manage and invest the principal thereof in such manner as the laws of Ohio direct, or might direct, in case of guardians of minors, and to use and expend the net income arising from said trust, in the maintenance, improvement and beautifying of the public park of said city known as Snyder park, including any extension thereof which said city might otherwise acquire."

The defendant, Bernard Bettmann, as collector of internal revenue for the first district of Ohio, collected from the plaintiff, the executor of David L. Snyder, because of this bequest, an inheritance tax under the war-revenue law of 1898, and which the executor paid under protest, and afterwards applied to the Commissioner of Internal Revenue to have refunded; but the Commissioner of Internal Revenue refused the application and this action is now brought to recover the amount of said tax, upon the ground that the law which authorized its levy and collection is in contravention of the Constitution of the United States.

It is urged, in substance, that the legacy is property, of the city of Springfield, devoted to the legitimate purposes of municipal government, and therefore non-taxable. But in view of the Supreme Court of the United States, as expressed in Knowlton *vs.* Moore, 178 U. S. 41; Plummer *v.* Coler, *ibid.* 115; Murdock *vs.* Ward, *ibid.*

139, the tax is not levied upon the legacy but, upon the
transmit the legacy from the deceased to the city of Sp
through the agencies provided by the laws of Ohio, and it
become the property of the city of Springfield until this t
is taken out during the process of transmission. A
18 not been levied upon the property either as the pr
the estate of David L. Snyder or as the property of
of Springfield, but a duty or charge has been levied upon t
of David L. Snyder, for the privilege of transmitting the
to the city of Springfield. This right or privilege of trans
is a subject of taxation, within the reach of either the na
State government.

Knowlton *vs.* Moore, 178 U. S. 58, *et seq.*

The case of The United States *vs.* The Railroad Company,
322 does not support the contention of the plaintiff because
ject of taxation there was an investment which the city of B
had duly made in pursuance of the laws of the State of M
The demurrer will be sustained and the petition dism
plaintiff's costs.

And afterwards, to wit, on the 28th day of December, A.
the following entry was made upon the journal of said court
in the words and figures following, to wit:

Journal 6, p. 363.

Demurrer Sustained.

This day this cause came on to be heard upon the amen
tion of the plaintiff and the general demurrer filed thereto
defendant. After and upon due consideration thereof the co
said demurrer to be well taken and the same is accordi
tained; and the plaintiff not desiring to plead further, it is t
adjudged that the petition be, and said cause is, hereby di
And it is further adjudged that the defendant recover f
plaintiff his costs herein expended, taxed at $—.

To all which orders, rulings and judgments of the co
plaintiff duly excepted.

19 And afterwards, to wit, on the 6th day of Januar
1902, the following petition for writ of error was filed
clerk's office of said court, clothed in the words and figures
ing, to wit:

WILLIAM L. SNYDER, Executor of David L. Snyder, Deceased, Plaintiff, *vs.* BERNARD BETTMAN, Collector, Defendant. } At Law. No. Petition for Writ

William L. Snyder, executor of David L. Snyder, decease
tiff in the above-entitled action, feeling himself aggrieved
order of the court upon the defendant's demurrer to the p

amended petition, and by the judgment entered in this action on the — day of December, 1901, comes now by J. E. Bowman, his attorney, and petitions said court for an order allowing said plaintiff to prosecute a writ of error to the honorable the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the said plaintiff shall give and furnish upon said writ of error.

And your petitioner will ever pray.

J. E. BOWMAN,
Attorney for Plaintiff.

20 And afterwards, to wit, on the 6th day of January, A. D. 1902, the following assignment of errors was filed in the clerk's office of said court clothed in the words and figures following, to wit:

Assignment of Errors.

WILLIAM L. SNYDER, Executor of David L. Snyder, Deceased, Plaintiff, *vs.* BERNARD BETTMAN, Collector, Defendant.	At Law. No. 5375. Assignment of Errors.

Comes now the plaintiff in the above-entitled action and files the following assignment of errors upon which he will rely in his prosecution of the writ of error in the above-entitled cause:

1.

That the United States circuit court in and for the western division of the southern district of Ohio, erred in sustaining the demurrer interposed by the defendant to the amended petition filed by the plaintiff in this action.

2.

That the said court erred in its ruling upon said demurrer that the said amended petition of the plaintiff did not state facts sufficient in law to constitute a cause of action against said defendant.

3.

That the said court erred in rendering judgment against the plaintiff in said action upon the pleadings therein, and that said judgment is contrary to law and the facts as stated in the plaintiff's amended petition in said action.

21–29 Wherefore the said plaintiff and plaintiff in error prays that the judgment of the said court be reversed, and such directions be given that full force and efficacy may enure to the

plaintiff by reason of the facts set up in his amended petition filed in said action.

J. E. BOWMAN,
Attorney for W. L. Snyder.

* * * * * * *

30 In the Supreme Court of the United States.

WILLIAM L. SNYDER, Executor of David L. Snyder, Deceased, Plaintiff in Error,
vs.
BERNARD BETTMAN, Collector, Defendant in Error. } Law. No. —.

Statement by plaintiff in error of errors on which he intends to rely and of the parts of the record which he thinks necessary to be printed.

The plaintiff in error here states that the only error on which he intends to rely is the error of the circuit court in sustaining the demurrer of the defendant to the amended petition of the plaintiff below, (now plaintiff in error here) and in holding that the said amended petition did not state facts sufficient in law to constitute a cause of action and in rendering judgment on the said pleadings in favor of the defendant in error (defendant below) and against the plaintiff in error.

The plaintiff in error further states that the only parts of the record necessary for the consideration of said error are the following:

The amended petition (page 12 *et seq.* of Record); the demurrer thereto (Record page 16); the court's opinion on said demurrer (Record page 16 *et seq.*); the judgment entry on said demurrer (Record page 18): petition for writ of error (Record page 19): and assignment of errors (Record page 20).

Plaintiff in error requests that all other parts of the record be omitted in the printing thereof.

J. E. BOWMAN,
Att'y for Pl'ff in Error.

31 FEBRUARY 1ST, 1902.

It is stipulated and agreed by the parties that the record in the foregoing action shall be printed in accordance with the foregoing statement of the plaintiff in error.

J. E. BOWMAN,
For Plaintiff in Error.
J. K. RICHARDS,
Solicitor General, for Defendant in Error.

32 [Endorsed:] Supreme Court of United States Wm. L. Snyder, executor of David L. Snyder, deceased, plaintiff in error

vs. Bernard Bettman, collector, defendant in error. Statement by plaintiff in error, of errors relied on and parts of record to be printed, and stipulation for printing accordingly.

33 [Endorsed:] File No. 18387. Supreme Court U. S. October term, 1901 Term No. 534 Wm. L. Snyder, ex'c'r &c. pl'ff in error *vs.* Bernard Bettmann, collector &c. Statement of errors and stipulation as to printing record Filed M'ch 17, 1902.

Endorsed on cover: File No. 18,387. S. Ohio C. C. U. S. Term No. 534. William L. Snyder executor of David L. Snyder deceased, plaintiff in error, *vs.* Bernard Bettmann, collector. Filed January 31st, 1902.

No. 534. 230

FILED
MAY 19 1902
JAMES H. McKENNEY,
Clerk.

Motion to advance.

No. 18387.

Filed May 19, 1902.

In the Supreme Court of the United States

OCTOBER TERM, 1901.

No. 534.

WILLIAM L. SNYDER,
Executor of David L. Snyder, Deceased,
Plaintiff in Error.

vs.

BERNARD BETTMAN, Collector,
Defendant in Error.

In Error to the Circuit Court of the United States for the Southern District of Ohio.

MOTION TO ADVANCE.

No. 18387.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1901.

No. 534.

WILLIAM L. SNYDER, Executor of DAVID L. SNYDER, Deceased,
Plaintiff in Error,
vs.
BERNARD BETTMAN, Collector,
Defendant in Error.

MOTION TO ADVANCE.

Comes now the plaintiff in error herein by J. E. Bowman, his Counsel, and respectfully moves the Court to advance the above entitled case for hearing and argument, and in support of said motion represents:

That the only question involved in said case is whether a legacy bequeathed by a resident of the State of Ohio to a municipal corporation of said State, the principal of said bequest to be held and managed and the income to be expended perpetually for the improvement and maintenance of the public park of said City, is subject to the tax provided in Sections 29, 30 and 31 of the Act of Congress approved June 13th, 1898, entitled "An Act to provide ways and means to meet war expenditures and for other purposes."

That the collection by the Federal Government of Twenty-Two Thousand Dollars as a legacy tax upon this bequest has crippled and embarrassed the city in its plans for the improvement of its public park, and that an early decision of the question involved would be of great public benefit.

It is further represented, by the authority of the Solicitor General, that the Government concurs in this motion.

Respectfully submitted.

J. E. BOWMAN,
Counsel for Plaintiff in Error.

FILE COPY.

FILED
FEB 16 1903
JAMES H. McKENNEY,
Clerk.

BRIEF OF PLAINTIFF IN ERROR.

(18,387.)

Supreme Court of the United States,

OCTOBER TERM, 1901.

No. 230

WILLIAM L. SNYDER, Executor of David L. Snyder,
Plaintiff in Error,

vs.

BERNARD BETTMAN, Collector,
Defendant in Error.

ERROR TO THE CIRCUIT COURT FOR
THE SOUTHERN DISTRICT OF OHIO.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 534.

WM. L. SNYDER, EXECUTOR OF
DAVID L. SNYDER, DECEASED,
Plaintiff in Error,
vs.
BERNARD BETTMAN, COLLECTOR,
Defendant in Error.

Brief for Plaintiff in Error.

STATEMENT.

The above action was begun in the Circuit Court for the Western Division of the Southern District of Ohio, October 10th, 1899, to recover of the defendant, as Internal Revenue Collector, certain sums paid under protest as inheritance taxes on legacies bequeathed by said David L. Snyder.

After the action was begun the decision of this Court in Knowlton vs. Moore was announced, and thereupon refunders were made to the Executor in accordance with that decision and the Executor, by consent of parties, filed an amended petition eliminating the matters covered by the said decision, in which he states:

That his testator David L. Snyder bequeathed to the City of Springfield, Ohio, (a municipal corporation of said State having power to receive such bequest) $200,000.00 in U. S. Government Bonds, in trust to manage and invest the principal thereof

in such manner as the Laws of Ohio direct, or might direct, in case of guardians of minors, and to use and expend the net income arising from said trust in the maintenance, improvement and beautifying of the public park of said City, known as Snyder Park, including any extensions thereof which said City might otherwise acquire, and that the said bequest had been duly accepted by the said City.

That the defendant as Collector demanded of the plaintiff taxes on account of said bequest under and by virtue of Sections 29, 30 and 31 of the Act of Congress approved June 13th, 1898, and entitled, "An Act to provide ways and means to meet war expenditures, and for other purposes," said taxes so demanded amounting to $27,500.00, being at the rate of 12½ per cent on the value of the legacy, $5,500.00 of which has been refunded by the defendant, who still retains the balance, namely, $22,000.00.

That before payment the Executor duly protested upon the ground hereinafter specified; but his said protest was denied, both by the Collector and by the Commissioner of Internal Revenue to whom the same was referred, and that thereafter on April 20th, 1899, the plaintiff paid under protest the taxes so demanded, and immediately thereafter prepared and submitted to the Commissioner of Internal Revenue, a claim in writing for the refunder of the same upon the ground hereinafter stated, which claim the said Commissioner denied.

That the said sum of $22,000.00 and every part of the same was illegally collected, for the reason that the Congress of the United States has no authority under the Constitution to impose any tax or burden upon the said City of Springfield, nor upon its exercise of the right to take said bequest under the will aforesaid.

A general demurrer was interposed by the defendant to this amended petition, which demurrer was sustained by the Circuit Court; and the plaintiff not desiring to plead further, a final judgment was rendered dismissing the action at the plaintiff's costs, which judgment the plaintiff now seeks to have reversed, assigning as error the sustaining of the defendant's demurrer to his amended petition.

Argument.

The sole question presented by this Record is whether a legacy left by a deceased resident of one of the States by will duly executed and probated in accordance with the Laws of said State, to a municipal corporation of the same State, authorized by its Laws to accept such bequest, of a sum of money the principal of which is to be held and invested and the income used perpetually in the maintenance of a public park in said City, is within the provisions of Sections 29, 30 and 31 of the Act of Congress above referred to.

Our proposition is that the Act in question is an exercise of the taxing power of the Federal Government; that it imposes an excise tax upon its subjects, the people of the United States, for the privilege of succeeding to property by will or under the intestate laws of the respective States; and since the City of Springfield is not a subject of the United States, but a branch of the State sovereignty, it is beyond the taxing power of the Federal Government

Upon the argument of our appeal before the Honorable Commissioner of Internal Revenue, our contention was denied upon the authority of United States against Perkins, 162 U. S. 625, where it was held by this Court that a legacy left to the Federal Government by a citizen of New York was subject to the legacy tax imposed by said State.

The Honorable Commissioner failed to observe that the principle of this decision is that the said State Inheritance Tax was the exercise, not of the power of taxation, but of the broader power of regulating the descent of property and its transmission by will in said State, that the Federal Government took its legacy by favor of the laws of said State regulating a subject of which the state had absolute and exclusive control, and could not accept the benefits and at the same time reject the conditions on which the benefits were granted.

It is quite manifest that the above decision proceeds upon the theory that, if the taxing power only of the State of New York had been involved, the Federal Government would not have been subject to it, as was plainly indicated by this Court in Knowlton vs. Moore, 178 U. S. at page 57.

The learned Circuit Court disposed of our contention in the following language: (Record, page 3, at foot.)

"It is urged in substance that the legacy is property of the City of Springfield devoted to the legitimate purposes of municipal government, and therefore non-taxable. But in view of the Supreme Court of the United States, as expressed in Knowlton vs. Moore, 178 U. S. 41, Plummer vs. Coler, Ibid 115, Murdock vs. Ward, Ibid 139, the tax is not levied upon the legacy, but upon the right to transmit the legacy from the deceased to the City of Springfield, through the agencies provided by the laws of Ohio, and it does not become the property of the City of Springfield until this toll or tax is taken out during the process of transmission. A tax has not been levied upon the property, either as the property of the estate of David L. Snyder, or as the property of the City of Springfield, but a duty or charge has been levied upon the estate of David L. Snyder, for the privilege of transmitting the property to the City of Springfield. This right or privilege of transmission is a subject of taxation within the reach of either the National or State Government."

We beg leave to assert that we do not contend, and never contended that this tax was upon the property. Indeed we have always conceded that the fact that this legacy was in Government 4 per cent Bonds, due in 1907, and which are expressely exempted from all taxation, was of no importance in this inquiry. But we deny that the duty is a charge levied upon the estate of David L. Snyder for the privilege of transmitting the property to the City of Springfield. We insist that the tax in question is a charge upon the legatee for the privilege of succeeding to the property, as stated by this Court in Knowlton vs. Moore, in the following language at page 60 of the report:

"Certainly a tax placed upon an inheritance or legacy diminishes to the extent of the tax, the value of the right to inherit or receive, but this is a burden cast upon the recipient and not upon the power of the State to regulate."

And upon page 66 the Court says:

"If it (the tax) is deducted from each particular legacy, then it is manifest that the tax imposed will have been levied, not upon the mass of the estate, but upon each particular legatee

or beneficiary, since the share of such person will have paid the rate of taxation predicated upon the amount of the legacy and the relationship, etc."

See also Magoon vs. Illinois Trust & Savings Society, 170 U. S. 283, page 288 and cases cited.

The learned Circuit Judge failed to distinguish between those portions of the opinion in Knowlton vs. Moore which deal with inheritance taxes in general and when levied by sovereigns having power to regulate successions, and those portions of the opinion which deal with the power of the Federal Government to impose such taxes and with the particular Act in question; and, therefore, he failed to discover that two of the points carefully decided in that case are, that the Federal Government has no power to regulate successions, and that tax in question is a burden imposed upon the legatee for the privilege of succession, as distinguished from a probate duty or an estate tax, which is a burden imposed upon the testator's estate for the privilege of probate, or for the right of transmitting.

Plummer vs. Coler, 178 U. S. 115, is of the same class as United States against Perkins, and deals with the power of the State of New York to impose a legacy tax where the legacy consists of United States Bonds exempted from taxation.

In such cases it is quite appropriate to say that the duty is a condition precedent which must be met before the legacy takes effect, and that the legacy does not become the property of the legatee until the toll or tax is paid; but when the tax is levied by a sovereign having no authority to regulate successions or to impose conditions upon the transmission of property by will or under the interstate laws, the expression is absurd; for to impose a toll or duty which must be paid before the intestate laws or the will can operate to transfer the interest, is a regulation of the succession. The difference is in words, not in substance.

We insist that the tax in question is an excise tax levied by the Federal Government upon its subjects, the people of the United States, for the privilege of exercising the right to succeed to property under the laws of the several States.

This is in accord with the elementary principles of taxation. "It is the exaction of money or services from individuals

as and for their respective shares of contribution to any public burden, for the purpose of enabling the Government to execute and discharge its functions."

25 A. & E. Encl. of Law, 12.

It is "a contribution imposed by government on individuals for the services of the State."

Miller on Constitution of the United States, page 235.

"Taxation implies tribute from the governed to some form of sovereignty."

West Hartford vs. Commissioners, 44 Conn. 460.

"Taxation is a charge levied by the sovereign power upon the property of its subjects. It is not a charge upon its own property, nor upon property over which it has no dominion. This excludes the property of the State, whether lands, revenues or other property, and the property of the United States."

People vs. McCreary 34 Cal. 432, page 456.

Quoted with approval by Mr. Justice Gray in Van Brocklin vs. Tenn., 117 U. S. 151.

These elementary propositions have always been applied in cases where a tax upon property was involved, and when the property with reference to which the tax was imposed, was clearly within the jurisdiction of the United States; and we submit their application is even clearer in a case such as this where the tax is upon the individual, and not upon the property; and the right or privilege, for the exercise of which the tax is imposed, is a right or privelege which the Federal Government has no power to regulate.

Since the tax in question applies as well to successions under intestate laws as to successions under wills, and since it is elementary that the States have the authority to regulate and control such successions; suppose the State of Ohio had enacted a law providing that upon the death of every citizen one-third of his personal estate should descend and pass to the State, or to the municipality in which he resided, to be used for public purposes.

Would the Federal Government have authority to impose a tax on account of the portion of the estate so passing?

Instead of making such a compulsory demand upon the estates of decedents, the State of Ohio authorizes them by will to direct any portion of their estates into the course above indicated, and empowers its municipalities to receive such voluntary contributions.

Is any different principle involved?

It is hardly necessary that authorities should be assembled upon the limitations of the taxing power; yet for your honor's convenience we here present a few of them.

In Lane County vs. Oregon, 7th Wallace 71, Mr. Chief Justice Chase speaking on the subject of taxation, says, page 76:

"The people of the United States constitute one nation, under one government and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each state compose a state, having its own government, and endowed with all the functions essential to a separate and independent existence." * * * * *

"Both the States and the United States existed before the Constitution. The people, through that instrument, established a more perfect union by substituting a National Government, acting, with ample power *directly upon the citizens*, instead of the Confederate Government, which acted with powers greatly restricted, only upon the States." * * * * *

"The general condition was well expressed by Mr. Madison in the Federalist, thus: The Federal and State governments, are, in fact, but different agents and trustees of the people, constituted with different powers and designated for different purposes."

In Dobbins vs. Erie Co., 16th Pet. 435, it was settled that no State has any power to impose an income tax upon the salary of an officer of the United States.

In Collector vs. Day, 11 Wallace 113, the converse of that proposition was also established, to-wit: The United States has no power to impose an income tax upon the salary of a State officer.

Mr. Justice Nelson delivering the opinion of the Court in the last case, page 124, says:

"The general government and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other within their respective spheres. The former in its appropriate

sphere is supreme, but the States within the limits of their powers not granted, or, in the language of the tenth amendment 'reserved', are as independent of the general government as that government within its sphere is independent of the States."

After quoting extensively from the opinion of Chief Justice Chase in Lane County vs. Oregon cited supra, Mr. Justice Nelson continues, page 126:

"The supremacy of the general government, therefore, so much relied on in the argument of the Counsel for the Plaintiff in error, in respect to the question before us, cannot be maintained. *The two governments are upon an equality.*"

In U. S. vs. B. & O. R. R. Co., 17th Wallace 322, the question was as to the taxability under Section 122 of the Internal Revenue act of 1862, imposing an income tax, of certain bonds of the B. & O. R. R. Co., which were held by the City of Baltimore.

The Court adjudged, first, that this income tax, while it was required to be paid by the R. R. Co., was a tax, not upon the R. R. Co., but upon the holder of its bonds; and, second, as stated in the language of the second syllabus, "Congress did not intend by the Internal Revenue laws to tax property belonging to the States, or to municipal corporations."

The principle upon which this conclusion was reached is shown in the following portion of the Court's opinion.

"The power of taxation by the Federal Government upon the subjects and in the manner prescribed by the act we are considering, is undoubted. There are, however, certain departments which are excepted from the general power. The right of the States to administer their own affairs through their legislative, executive and judicial departments in their own manner, through their own agencies, is conceded by the uniform decisions of this Court and by the practice of the Federal Government from its organization. This carries with it an exemption of those agencies and instruments from the taxing power *of the Federal Government.* If they may be taxed lightly, they may be taxed heavily, if justly oppressive. Their operation may be impeded and may be destroyed, if any interference is permitted. *Hence the beginning of such taxation is not allowed on the one side, is not claimed on the other.*"

In the case last cited the Court referred at length to Internal Revenue cases where the department itself had uniformly held that the exception of the States and their municipalities must always be inferred.

In Van Brocklin vs. Tennessee, 117th U. S. 151, the question was as to the power of the state government to tax real estate within its limits, the title to which was in the Federal government, having been lawfully acquired by it on a sale to pay taxes, and the Court adjudged that the State had no authority to impose such taxes.

Mr. Justice Gray quoting from Fagan vs. Chicago, 84 Illinois 227, says, page 162:

"Nor under our system of government can the States tax the general government, its agents or property, nor can the general government tax the States, their agents or property.

A municipal corporation has no power to assess or exact from the state or the general government any sum for benefits conferred. *The power to levy taxes, or to impose assessments for benefits, can only be exercised on the governed, and not on the governing power, whether State or Federal.*"

In the recent case of Pollock vs. Trust Co., 157 U. S., one of the grounds upon which the recent Federal income tax law was held invalid was that it sought to impose taxes upon income derived from municipal bonds.

Mr. Chief Justice Fuller announces the opinion of the majority, as follows, page 584:

"As the States cannot tax the powers, the operations or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held the *United States has no power under the Constitution to tax either the instrumentalities or the property of a State.*

"A municipal corporation is the representative of the State and one of the instrumentalities of the State Government. It was long ago determined that the property and revenues of municipal corporations are not subjects of Federal taxation."

And Mr. Justice Harlan, who upon some of the questions dissented from the conclusions announced by the Chief Justice, upon this point says, pages 653-54:

"While property and the gains, profits and income derived from property belonging to private corporations and individuals

are subjects of taxation for the purpose of paying the debts and providing for the common defence and the general welfare of the United States, the instrumentalities employed by the States in the execution of their powers are not subjects of taxation by the general government any more than the instrumentalities of the United States are the subjects of taxation by the States and any tax imposed directly upon interest derived from bonds issued by a municipal corporation for public purposes under the authority of the state whose instrumentality it is, is a burden upon the exercise of the powers of that corporation which only the State creating it may impose."

"In such a case it is immaterial to inquire whether the tax is in its nature or by its operation a direct or an indirect tax; for the instrumentalities of the States—among which it is well settled are municipal corporations exercising powers and holding property for the benefit of the public—are not subjects of national taxation in any form or for any purpose, while the property of private corporations and of individuals is subject to taxation by the general government for national purposes. So it has been frequently adjudged, and the question is no longer an open one in this Court."

In the act under consideration in the case last referred to, the income of the States, Counties and municipalities was expressly exempted; but a tax on individuals on income derived by them from municipal bonds was held void, by reason of its indirect effect to embarrass or impede municipalities in the exercise of their power to borrow money; while in the case now under consideration, the tax is directly on the municipality imposing a burden on its exercise of the right to succeed to property under the laws of the State which created it.

The City of Springfield has authority to acquire money for park purposes by taxation; it has authority to acquire money for park purposes by borrowing the same and issuing bonds to be met by taxation; and it has authority to acquire money for such purpose by gift inter vivos or by testamentary bequest; and we submit the Federal Government has as much authority to tax it for the exercise of all of these powers, as for the exercise of any one of them.

It may, indeed, be true that the succession or the passing of the legacy is the subject matter or thing with respect to which the tax is imposed; but the municipality is the person upon whom the burden is imposed.

If the Federal Government were to enact another carriage tax, and undertake to subject a municipality to the tax for the privilege of running its police patrol, it could with as much force be argued that the tax was upon the passing of the carriage, and not upon the municipality.

We respectfully submit that while the Federal Government levies taxes with respect to property and to rights and privileges, such taxes are always contributions required by the governing power from the governed; otherwise, in every case, the Federal Government might tax the property of the States under the claim that the tax was upon the property and not upon the State.

An inheritance tax, when levied by a sovereign having no power to regulate successions, must be either upon the testator for the privilege of transmitting the property, or upon the legatee for the privilege of receiving it.

The whole scheme and structure of the act in question, as interpreted by this Court in Knowlton vs. Moore, shows that this tax is a burden levied upon the legatee. The testator is beyond the jurisdiction, and in this case the legatee is also.

Respectfully submitted,

J. E. BOWMAN,

Counsel for Plaintiff in Error.

FILE COPY.

Office Supreme Court U. S.
FILED
APR 4 1903
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

WILLIAM L. SNYDER, EXECUTOR OF DAVID L. Snyder, deceased, plaintiff in error,
v.
BERNARD BETTMAN, COLLECTOR. } No. 230.

BRIEF FOR THE UNITED STATES.

JAMES M. BECK,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

WILLIAM L. SNYDER, EXECUTOR OF DAVID L. Snyder, deceased, plaintiff in error,
v.
BERNARD BETTMAN, COLLECTOR.
} No. 230.

BRIEF FOR THE UNITED STATES.

I.

The plaintiff in error, by his direct appeal from the circuit court, raises the single question as to whether sections 29 and 30 of the war-revenue act of June 13, 1898 (30 Stats., 448–464), are constitutional.

The essential portions of these lengthy sections are as follows:

Section 29 provides:

> That any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of ten thousand dollars in actual value, passing, after the passage of this act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after

the death of the grantor or bargainer, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be, and hereby are made subject to a duty or tax, to be paid to the United States, as follows:

(Here follows a graded tax dependent upon the amount of the estate, and the relationship of the legatee to the decedent).

Section 30 provides:

That the tax or duty aforesaid shall be a lien and charge upon the property of every person who may die as aforesaid for twenty years, or until the same shall, within that period, be fully paid to and discharged by the United States; and every executor, administrator, or trustee, before payment and distribution to the legatees or any parties entitled to beneficial interest therein, shall pay to the collector or deputy collector of the district of which the deceased person was a resident the amount of the duty or tax assessed upon such legacy or distributive share, and shall also make and render to the said collector or deputy collector a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the amount of duty which has accrued or shall accrue thereon, verified by his oath or affirmation, to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, which schedule, list, or statement shall contain the names of each and every person entitled to any beneficial interest therein, together with the clear value of such interest, the duplicate of which schedule, list, or statement shall be by him immediately delivered and the tax thereon paid to such collector; and upon such payment and delivery of such schedule, list, or statement said collector or deputy collector shall grant to such person paying such duty or tax a receipt or receipts for the same in duplicate, which shall be prepared as hereinafter provided.

Such receipt or receipts, duly signed and delivered by such collector or deputy collector, shall be sufficient evidence to entitle such executor, administrator, or trustee to be credited and allowed such payment by every tribunal which, by the laws of any State or Territory, is, or may be, empowered to decide upon and settle the accounts of executors and administrators.

(Here follow further provisions to compel the executor, administrator, or trustee of the decedent's estate to comply with the provisions of law.)

II.

In the present case it appears that one David L. Snyder died in Clark County, Ohio, and by his last will "did give and bequeath unto the city of Springfield, a municipal corporation of the State of Ohio," $200,000, face value, of United States bonds, for public purposes. The petition further recites that the plaintiff, William L. Snyder, is the executor under the will of David L. Snyder, and that at the demand of the collector of internal revenue he paid the sum of $22,000 as a succession tax upon the said bequest, under protest, and he affirms, in substance, that the act of Congress, in so far as it sought to impose such a tax, is unconstitutional, because the tax is levied upon a municipal corporation, a governmental agency of the State.

III.

I concede that the city of Springfield is such a governmental agency, and the law is unquestioned that neither the United States, on the one hand, can tax the governmental agencies of the States, nor can the

States, on the other hand, tax the agencies of the Federal Government. If, therefore, this be a tax in fact upon the city of Springfield, or its property, it was illegally exacted.

The pivotal question, therefore, is, Upon what is the tax imposed? As to this I think there can be no question, since the decisions in *Perkins* v. *United States* (163 U. S., 625); *Knowlton* v. *Moore* (178 U. S., 41); *Plummer* v. *Coler* (Id., 115); *Murdock* v. *Ward* (Id., 139).

In *United States* v. *Perkins*, one Merriam, a resident of the State of New York, bequeathed all of his estate to the United States Government. The State of New York, by the act of 1892, passed prior to Merriam's death, imposed a tax "upon the transfer of any property, real or personal, of the value of $500 or over, to persons or corporations, not exempt by law from taxation on real or personal property." It was contended in behalf of the United States that such a tax upon Merriam's bequest was in effect a tax upon property of the United States, and therefore invalid. This court, in an opinion by Mr. Justice Brown, considered the nature of the tax, negatived this contention, and held (p. 628):

> In this view the so-called inheritance tax of the State of New York is in reality a limitation upon the power of a testator to bequeath his property to whom he pleases; a declaration that in the exercise of that power he shall contribute a certain percentage to the public use; in other words, that the right to dispose of his property by will shall remain, but subject to a condition that the State has a right to impose. Certainly, if it be true that the right of testamentary disposition is

> purely statutory, the State has a right to require a contribution to the public treasury before the bequest shall take effect. *Thus the tax is not upon the property in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee.*

Again, the court say (p. 630):

> *We think that it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the Government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it.*

Applying the principle of the *Perkins* case to the case at bar, it follows that the tax imposed by the war-revenue act is not imposed upon the property of the city of Springfield, but upon the estate of David L. Snyder, and that his bequest of $200,000 in United States bonds did not become the property of the city of Springfield until after it had been diminished by the payment of the tax, and that such tax is therefore not paid by the city of Springfield, but by the executor of decedent's estate. Indeed, it is a fair assumption that the testator had knowledge of and intended that the bequest should be thus diminished. As the testator is presumed to know the law, it must be assumed that *his intention* was that the city of Springfield should only receive the bequest after the payment of lawful tax charges, whether imposed by the State or nation. The intention of the testator, however, is

not important, for whatever such intention, the Federal Government has a right to impose upon the assets of decedent a tax before its transmission to the legatee.

Its power to do so was first assailed in *Knowlton* v. *Moore* (178 U. S., 41), in which it was ably contended that such a tax was in effect a tax upon the right of the State to regulate the manner of descents, and was for that reason invalid. This court, in a learned opinion by Mr. Justice White, carefully considered the nature of death duties, and held that the tax was not a tax upon the power of the State to regulate the devolution of property, but upon the transmission of property. It is true that in that case the court said that the tax was "a burden cast upon the recipient and not upon the power of the State to regulate," and if this statement had not been explained in the later cases, and the principle of *United States* v. *Perkins* reaffirmed, this fugitive expression in Mr. Justice White's opinion might justify the conclusion that the tax is, in fact, imposed upon the legatee, which, in the case of the city of Springfield, would unquestionably make it invalid. But there is a clear distinction between the imposition of a tax in legal contemplation and the bearing of its consequent burden. The party who in the first instance pays the tax, and who is legally liable to pay it, does not always bear its burden, for the burden is often shifted. Thus, in all excise and tariff taxes the burden is ordinarily paid by the consumer and not by the party legally liable in the first instance to

pay the tax. This single sentence in the opinion of *Knowlton* v. *Moore*, therefore, upon which the plaintiff in error in the case at bar places so much reliance, when read in connection with the previous opinion of *United States* v. *Perkins*, and the later case of *Murdock* v. *Ward*, may be interpreted as meaning that while the tax is imposed upon the estate of the decedent and not upon the legatee in contemplation of law, yet its burden does fall upon the legatee in the sense that the fund is diminished before it reaches his hands. There is no suggestion in the opinion in *Knowlton* v. *Moore* that the previous doctrine, as laid down in *United States* v. *Perkins* as to the character of the succession tax, was intended to be modified. On the contrary, the *Perkins* case is cited with approval.

In *Plummer* v. *Coler* (*supra*) and *Murdock* v. *Ward* (*supra*), the doctrine of the Perkins case was clearly reaffirmed.

In *Plummer* v. *Coler*, Plummer, a citizen of New York, bequeathed certain United States bonds to a trustee for a daughter. The State of New York sought to impose a succession tax upon this bequest, and this was resisted on the ground that United States bonds as such were not taxable. If the tax fell upon the property, this was unquestionably so. This court, in an opinion by Mr. Justice Shiras, reaffirmed the case of *United States* v. *Perkins*, and quoted from it at length.

Referring to the Perkins case, this court said (p. 130):

> It was contended that, upon principle, property of the United States was not subject to State taxation, but it was held by this court, affirming the judgment

of the courts below, that the tax was not open to the objection that it was an attempt to tax the property of the United States, *since the tax was imposed upon the legacy before it reached the hands of the legatee; that the legacy became the property of the United States after it had suffered a diminution to the amount of the tax, and that it was only upon such a condition that the legislature assented to a bequest of it.*

Again, the court say (p. 132):

One of the propositions recognized in that case applicable to the present one is that a State tax that would be invalid if imposed directly on a legacy to the United States may be valid *if the amount of the tax is taken out of the legacy before it reaches the hands of the Government—the theory of such a view apparently being that the property rights of the Government do not attach until after the tax has been paid*, or until the condition imposed by the tax law of the State has been complied with. Such is also the case in respect to the legacy to Ella Plummer Brown, as *the statute in question distinctly makes it the duty of the executor to pay the amount of the tax before the legacy passes to the legatee.*

The opinion concludes with this final statement of the nature of an inheritance tax (p. 138):

For, after all, what is an inheritance tax but a debt exacted by the State for protection afforded during the lifetime of the decedent? It is often impracticable to secure from living persons their fair share of contribution to maintain the administration of the State, *and such laws seem intended to enable to secure payment from the estate of the citizen when his final account is settled with the State.*

In *Murdock* v. *Ward, supra*, the constitutionality of the very sections of the war-revenue act, whose constitu-

tionality is now assailed, was under consideration. In that case one Jane H. Sherman, by her last will, made certain bequests and devises, and her executor, under protest, paid the tax provided for in section 29 of that act. It was held, on the authority of *Knowlton* v. *Moore*, that it was—

> within the province of the constitutional power of the United States to levy a tax upon a right of inheritance or disposition by will provided for by the laws of the State of New York.

Referring to the previous cases, in which State succession laws were considered, this court says (p. 147):

> If a State inheritance law can validly impose a tax measured by the amount or value of the legacy, even if that amount includes United States bonds, the reasoning that justifies such a conclusion must, when applied to the case of a Federal inheritance law taxing the very same legacy, bring us to the same conclusion. We must, therefore, hold that if, as held in *Knowlton* v. *Moore*, the tax imposed under the act of June 13, 1898, is not invalid as a direct, unapportioned tax, nor for want of uniformity, nor as an infringement upon the laws of the States regulating wills and descents, then the tax upon legacies or bequests, descendible under and regulated by State laws, is valid, even if such legacies incidentally are composed of Federal bonds.

Applying the principles of these cases to the case at bar, I submit that the Government has not attempted to, nor has it, taxed the city of Springfield or its property. It has simply taxed the executor of an estate, as its legal representative, for the right of transmission, and while the burden of the tax may eventually fall

upon the city of Springfield, in so far as the value of the bequest is affected or decreased by the taxation before the legacy becomes its property, yet it is the *transmission* that is taxed. The undistributed estate in the possession of the executor is taxed by both State and Nation with other charges of administration, to which all estates are subjected, and by which the value of all estates may be affected. The person taxed is the executor; the thing taxed, decedent's estate.

The legislation in question is explicit upon this point. It is the "persons having in charge or trust as administrators, executors, or trustees" who "are made subject to a duty or tax." (Section 29.) The tax or duty "shall be a lien and charge upon the property of every person who may die, as aforesaid, for twenty years, or until the same shall within that period be fully paid to and discharged by the United States," and it is the "executor, administrator, or trustee, before payment and distribution to the legatees," who shall pay to the collector the amount of the tax. (Section 30.)

Congress was, therefore, careful to follow almost the very words of the decision of this court in *United States* v. *Perkins*, by imposing a tax upon the decedent's estate in the name of the executor, and not upon the legatee.

It must, therefore, follow that as it is lawful for a State to tax a bequest to the Federal Government, the latter has equal power to tax a bequest to a State. No reasonable distinction is perceivable between the two, unless the thing taxed is the right to regulate

the manner of descents; but this view of the nature of the tax was distinctly repudiated by this court in *Knowlton* v. *Moore* (*supra*).

Respectfully submitted.

JAMES M. BECK,
Assistant Attorney-General.

()

Supreme Court of the United States.

No. 230.—October Term, 1902.

William L. Snyder, Executor, Plaintiff in Error, *vs.* Bernard Bettman, Collector.	In error to the Circuit Court of the United States for the Southern District of Ohio.

[June 1, 1903.]

This was an action brought by the executor of David L. Snyder against the collector of internal revenue to recover $22,000, succession tax upon a legacy of $220,000, bequeathed to the city of Springfield, Ohio, in trust to expend the income in the maintenance, improvement and beautifying of a public park of the city, known as Snyder Park, including any extension thereof which said city might acquire. Such tax having been paid under protest, this action was brought to secure a refunding of the same.

A demurrer to the petition having been overruled by the Circuit Court, and final judgment entered, the case was brought here by writ of error.

Mr. Justice Brown delivered the opinion of the Court.

This case involves the single question whether it is within the power of the Federal government, and within the spirit of the act of Congress of June 13, 1898, (31 Stat. 946,) to impose a succession tax upon a bequest to a municipal corporation of a State for a corporate and public purpose.

The case is to a certain extent the converse of those of the *United States* v. *Perkins*, (163 U. S. 625,) and *Plummer* v. *Coler*, (178 U. S. 115.) In the first of these we held it to be within the competency of the State of New York to impose a similar tax upon a bequest to the Federal government, incidentally deciding that the inheritance tax of the State was "in reality a limitation upon the power of a testator to bequeath his property to whom he pleases, and a declaration that, in the exercise of that power, he shall contribute a certain percentage for the public use;" and (2) that the tax was not a tax upon the property itself, but upon its transmission by will or descent. In *Plummer* v. *Coler* we held the incidental fact that the property bequeathed is composed in whole or in part of Federal securities, did not invalidate the State tax or the law under which it was imposed, although it was accepted as undeniable that the State could not, in the exercise of the power of taxation, tax obligations of the United States, and, correlatively, that bonds issued by a State, or under its authority by its municipal bodies, were not taxable by the United States.

It is insisted, however, that the case under consideration is distinguished from those above cited, in the fact that the inheritance tax of New York was but a condition annexed to the power of a testator to dispose of his property by will, and that such power, being purely statutory, the State has the right to annex such conditions to it as it pleases. The case, then, really resolves itself into the question whether the authority to lay a succession tax arises solely from the power to regulate the descent of property, or, as well from the independent general power to tax, or, as expressed in the Constitution, art. I, sec. 8, "to lay and collect taxes, duties, imposts and excises." The difficulty with this proposition of the plaintiff is that it proves too much. If it be true that the right to impose such taxes arises solely from the right to regulate successions, then a denial of such right goes to the whole power of the government to impose a succession tax, irrespective of the question whether the legacy is made to a private individual or to an agent of the State, and the cases in this court upholding the power of the Federal government to lay such tax were wrongly decided.

That question was exhaustively considered by this court in *Knowlton* v. *Moore*, (178 U. S. 41,) in which the constitutionality of this law was attacked upon four grounds: (1) That the taxes imposed were direct taxes, and not apportioned according to the population; (2) if not direct, they were levied on rights created solely by a State law, depending for their continued existence on the consent of the several States; (3) because they were not uniform throughout the United States; (4) that the rate of tax was determined by the aggregate amount of the personal estate of the deceased, and not by the sum of the legacies or distributive shares. It was held, following the cases of *United States* v. *Perkins*, (163 U. S. 625,) and *Magoun* v. *Illinois Trust & Savings Bank*, (170 U. S. 283,) that an inheritance tax was not one upon property but upon the succession. The question involved here, as to the power of Congress to levy a succession tax, was considered, and it was said by Mr. Justice White (p. 56): "The proposition that it cannot rests upon the assumption that, since the transmission of property by death is exclusively subject to the regulating authority of the several States, therefore the levy by Congress of a tax on inheritances or legacies in any form is beyond the power of Congress, and is an interference by the national government with a matter which falls alone within the reach of State legislation." This proposition was pronounced a fallacy (p. 59): "In legal effect, then, the proposition upon which the argument rests is that wherever a right is subject to exclusive regulation, by either the government of the United States on the one hand or the several States on the other, the exercise of such rights as regulated can alone be taxed by the government having the mission to regulate." In this connection was cited the power of the States to tax imported goods

after they had been commingled with the general property of the State, as well as vehicles engaged in interstate commerce.

Continuing, it was further said (page 60): "It cannot be doubted that the argument, when reduced to its essence, demonstrates its own unsoundness, since it leads to the necessary conclusion that both the national and State governments are divested of those powers of taxation which, from the foundation of the government, have admittedly belonged to them. . . . Under our constitutional system both the national and the State governments, moving in their respective orbits, have a common authority to tax many and divers objects, but this does not cause the exercise of its lawful attributes by one to be a curtailment of the powers of the other, for if it did there would practically be an end of the dual system of government which the Constitution established."

This case must be regarded as definitively establishing the doctrine that the power to tax inheritances does not arise solely from the power to regulate the descent of property, but from the general authority to impose taxes upon all property within the jurisdiction of the taxing power. It has usually happened that the power has been exercised by the same government which regulates the succession to the property taxed; but this power is not destroyed by the dual character of our government, or by the fact that under our Constitution the devolution of property is determined by the laws of the several States.

The principles laid down in *Knowlton* v. *Moore* were reiterated in *Murdock* v. *Ward*, (178 U. S. 139,) although the case was decided upon the authority of *Plummer* v. *Coler*.

If it be true that it is beyond the power of Congress to impose an inheritance tax because the descent of property is regulated by State statutes, it would be difficult to support its power to impose stamp taxes upon commercial and legal instruments, since the conveyance, regulation and transmission of all property is governed by the laws of the several States. Particularly would this be so with reference to stamp duties imposed upon documents connected with the devolution of the property of a deceased person. And yet, as stated in *Knowlton* v. *Moore*, (page 50,) Congress, as early as 1797, imposed a stamp duty, not only upon receipts or other discharges for or on account of any legacy, or for a share of personal estate divided under the statute of distributions, proportioned to the amount of the legacy or such distributive share, but in the internal revenue act of 1862, (12 Stat. 432, 483,) a tax was imposed upon the probate of wills and letters of administration, proportioned to the value of the estate. Not only this, but the same statute imposed a tax upon writs, or other original process, by which suits are commenced in any court of record, exempting only processes issued by justices of the peace, or in suits

begun by the United States, or any State. This act was treated as applicable to the State courts, although its constitutionality may well be doubted.

Referable to the same principle is the power of Congress to tax occupations which can only be carried on by permission of the State authorities and under conditions prescribed by its laws—such, for instance, as the profession of a lawyer or physician, or the business of dealing in spirituous liquors, for which licenses are required under the laws of nearly all the States. While the power of Congress to impose such taxes may never have been expressly affirmed by this court, it does not seem to have been seriously questioned, and is a legitimate inference from *McGuire* v. *The Commonwealth*, (3 Wall. 387;) *The License Tax Cases*, (5 Wall. 462;) *Pervear* v. *The Commonwealth*, (5 Wall. 475,) and *Royall* v. *Virginia*, (116 U. S. 572, 580.) See also *Ould* v. *City of Richmond*, (23 Gratt. 464;) *Humphreys* v. *City of Norfolk*, (25 Gratt. 97.)

Conceding fully that Congress has no power to impose a burden upon a State or its municipal corporations, the question in each case is whether the tax is direct or incidental; since we have had frequent occasion to hold that the imposition of a tax may indirectly affect the value of property to the amount of the tax without being legally objectionable as a direct burden upon such property. Thus in *Van Allen* v. *The Assessors*, (3 Wall. 573,) we held it to be within the power of the States to tax the shares of national banks, though a part or the whole of the capital of such bank were invested in national securities exempt from taxation, upon the ground that the taxation of the shares was not a taxation of the capital. So a tax upon deposits was upheld, though such deposits were invested in United States securities. (*Society for Savings* v. *Coite*, 6 Wall. 594; *Provident Institution* v. *Massachusetts*, 6 Wall. 611; *Hamilton Co.* v. *Massachusetts*, 6 Wall. 632.) The same principle was extended to a statute of New York, imposing a tax upon corporations measured by its dividends, though such dividends were derived from interest upon Government bonds. (*Home Ins. Co.* v. *New York*, 134 U. S. 594.) As the tax in the case under consideration is collected from the property while in the hands of the executor (sec. 30), who is required to liquidate it "before payment and distribution to the legatees," we do not regard it as a tax upon the municipality, though it may operate incidentally to reduce the bequest by the amount of the tax. Such incidental effects are common to many, if not all, forms of taxation—indeed it may be said generally that few taxes are wholly paid by the person upon whom they are directly and primarily imposed.

Having determined, then, that Congress has the power to tax successions; that the States have the same power, and that such power extends to bequests to the United States, it would seem to follow logically that Congress has the same power to tax the transmission of property by legacy to States, or their municipalities, and that the exercise of that power in

neither case conflicts with the proposition that neither the Federal nor the State government can tax the property or agencies of the other, since, as repeatedly held, the taxes imposed are not upon property, but upon the right to succeed to property.

If the position of the plaintiff be sound, it will come to pass that, with the same power to tax the subject-matter, *i. e.*, the transmission of the property, the States are competent to limit the amount of bequests to the Federal government by requiring the prepayment of a succession tax as a condition precedent to the transmission of the property, while Congress is impotent to accomplish the same result with respect to legacies to States or their agents. We are reluctant to admit the inferiority of Congress in that particular.

The judgment of the Circuit Court is therefore,

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 230.—October Term, 1902.

William L. Snyder, Executor, Plaintiff in Error, vs. Bernard Bettman, Collector.	In error to the Circuit Court of the United States for the Southern District of Ohio.

[June 1, 1903.]

Mr. Justice White, with whom concur Mr. Chief Justice Fuller and Mr. Justice Peckham, dissenting.

It is conceded in the opinion of the court that the bequest upon which it is sought to levy the United States inheritance tax was made to a municipal corporation for a public, that is, a governmental purpose. This being the admitted premise, I cannot give my assent to the proposition that the tax can be imposed. Nothing is better settled than that the United States has no power to tax the governmental attributes of the States, and that municipal corporations are agencies of the States and not subject, as to their public rights and duties, to direct or indirect taxation by the United States. The doctrine has nowhere been more clearly stated than in *Pollock* v. *Farmers' Loan & Trust Co.*, (157 U. S. 429, 583–584.) In that case, despite the division of opinion on other questions, the court was unanimous in holding that, in any event, income subject to taxation by the United States could not include interest derived from municipal bonds, because to include such interest in income subject to taxation would amount at least to an indirect charge upon a State governmental agency. Speaking through Mr. Chief Justice Fuller, the court said:

"The Constitution contemplates the independent exercise by the nation and the State of their constitutional powers.

"As the States cannot tax the powers, the operations or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the Constitution to tax either the instrumentalities or the property of a State.

"A municipal corporation is the representative of the State and one of the instrumentalities of the State government. It was long ago determined that the property and revenues of municipal corporations are not subjects of Federal taxation. (*Collector* v. *Day*, 11 Wall. 113, 124; *United States* v. *Railroad Company*, 17 Wall. 322, 332.)"

It is true that in *United States* v. *Perkins*, (163 U. S. 625,) and *Plummer* v. *Coler*, (178 U. S. 115,) it was held in the one case that an inheritance

tax of the State of New York could be taken out of a bequest to the United States, and in the other that a bequest of bonds of the United States was subject to a State inheritance tax. It is also true that in *Knowlton* v. *Moore*, (178 U. S. 41,) it was decided that the United States had the power to impose an inheritance tax. But the ruling in none of these cases, in my opinion, sustains the decision now made. The power of the State of New York, which was upheld in both the Perkins and Coler cases, rested not simply on the authority of that State to impose an inheritance tax, but upon its admitted right to regulate the transmission or receipt of property by death. On the other hand, the right of the United States to levy an inheritance tax, which was upheld in *Knowlton* v. *Moore*, was based solely upon the power of the United States to tax, and that case therefore conveys no intimation that there is authority in the United States to levy an inheritance tax upon an object which it has no power under the Constitution to tax at all, either directly or indirectly. The distinction between the two, that is, between the broader power of a State resulting from its authority not only to tax but also to regulate the transmission or receipt of property by death, and the narrower power, that is, of taxation alone vested in the government of the United States, was explicitly pointed out in *Knowlton* v. *Moore*, *supra*, at page 57. Moreover, attention was specially directed to the obvious distinction between the two on page 58, where it was said:

"Of course, in considering the power of Congress to impose death duties we eliminate all thought of a greater privilege to do so than exists as to any other form of taxation, as the right to regulate successions is vested in the States and not in Congress."

So also the difference between the two had been previously accentuated in *Magoun* v. *Illinois*, (170 U. S. 287, 288.) There is no confusion between the two classes of cases, and no room in reason seems to me to exist for the assumption that things which are different are nevertheless one and the same. On the contrary, to my mind it appears that misconception will necessarily be caused by confounding wholly different powers and from supposing that because a particular result is justified where a specified power exists, the same consequence must obtain where the power upon which it depends is wanting. Certainly, I assume, it cannot be said because a State has the right to regulate successions and, therefore, to prevent property from passing by death to the United States, hence also the United States must have power by regulating successions to prevent property from passing by death to a State or its governmental agencies. And yet, in my opinion, this is the logical consequence of the doctrine that because the States may in virtue of an authority belonging to them accomplish a particular result as regards the United States, therefore the United States must have the right to bring about the same thing as to the States. The

United States not possessing, as the States do, the right to regulate successions, when the United States calls into play its taxing power over the subject of the passage or receipt of property by death, the extent of its authority is to be measured solely by the scope of the taxing power conferred by the Constitution. When, on the contrary, the State imposes a burden upon the passage or receipt of property by death, its right to do so, if not sustainable by the exercise of the taxing power, finds adequate support in the authority vested in it to regulate the transmission or receipt of property on the occasion of death. This was clearly pointed out in *United States* v. *Perkins*, *supra*, 630, where it was said: "The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it." Nor, do I see the force of the suggestion that as the tax in question is imposed upon the property in the hands of the executor before payment and distribution to the legatees, it, therefore, cannot be regarded as tax upon the right of the municipality to receive the legacy. It was held, after great deliberation, in *Knowlton* v. *Moore*, (178 U. S. 41,) that the inheritance taxes levied by the act of Congress were not imposed on the estate of the decedent but were laid on the passing of the legacies, and on nothing else. It cannot be the intention now to bring about the confusion which must arise from overthrowing this settled doctrine, since it is conceded that the only question for decision is the right of Congress to impose a succession tax *upon the bequest to a municipal corporation for a public purpose*. It being admitted that such is the question for decision, I do not perceive how that question can be solved by saying that the tax is not on the passing of the bequest to the municipality, but is imposed on the estate in the hands of the executor before the municipality receives its legacy. It was not only directly held in *Knowlton* v. *Moore* that the tax was on the transmission or the receipt of the legacy occasioned by death, and was therefore not on the property, not on the estate, not on the executor, but that it was also held to be a burden imposed on the recipient. The court said (p. 60):

"Certainly, a tax placed upon an inheritance or legacy diminishes, to the extent of the tax, the value of the right to inherit or receive, but *this is a burden cast upon the recipient*, and not upon the power of the State to regulate."

This conclusion was absolutely essential to the construction of the statute which was sustained in *Knowlton* v. *Moore*. I do not perceive how it can be now held that the tax is valid because it is on the estate in the hands of the executor and not a burden on the recipient, when the case of *Knowlton* v. *Moore*, which explicitly holds to the contrary, is expressly approved. It is, however, suggested that the tax is only incidentally on the right of the

corporation to receive, and therefore is valid. If "incidentally" is intended to refer to the subject upon which the tax is levied, then the proposition, in my opinion, only reiterates the misconception to which attention has been previously called, and it besides conflicts with the conceded premise that the question for decision is whether a tax can be validly imposed on the right of a municipal corporation to take a legacy. Such cannot be the question if there is no such question in the case. If the term "incidentally" conveys the thought that the tax is only indirectly on the corporation's right to take the bequest, and therefore it may be lawfully imposed, the doctrine overthrows the rule announced by Chief Justice Marshall in *McCulloch* v. *Maryland*, and reiterated in numberless cases since that decision, to the effect that where there is a want of constitutional power to tax a particular object neither a direct nor an indirect tax can be imposed, since the power to tax is the power to destroy. It to me seems that the tax here in question bears more directly upon the right of the corporation to take the bequest than did the tax which was condemned in *McCulloch* v. *Maryland*. Assuredly, the inclusion in income subject to taxation of an amount derived from interest on municipal bonds is less directly on the bonds than is the tax in this case, on the right of the municipality to take, and yet, as I have said in *Pollock* v. *Farmers' Loan & Trust Company*, the tax on an income made up in part of interest on a municipal bond was declared to be void, because, even if indirect, it could not be levied where there was no power to tax at all. The distinction was pointed out in *Knowlton* v. *Moore*, where, in referring to the statement of Mr. Chief Justice Marshall in *McCulloch* v. *Maryland*, that the power to tax involves the power to destroy, it was said (p. 60):

"This principle is pertinent only when there is no power to tax a particular subject. . . . In other words, the power to destroy which may be the consequence of taxation is a reason why the right to tax should be confined to subjects which may be lawfully embraced therein, even although it happens that in some particular instance no great harm may be caused by the exercise of the taxing authority as to a subject which is beyond its scope."

To my mind no doctrine more dangerous and more subversive of a long line of settled authority in this court could be announced than the statement that, although there is no power whatever to tax a particular object, the courts will nevertheless maintain a tax if it only indirectly puts a burden on the forbidden object or that the tax may be sustained because in the judgment of a court the degree in which the constitution has been violated is not great. Constitutional restrictions are in my opinion imperative, and ought not to be disregarded because in a particular case it may be the judgment of a court that the violation is not a very grievous one.

Testing the validity of the tax in this case solely by the extent of the power to tax conferred on the government of the United States by the Constitution, it follows, as the United States has no right to directly or indirectly burden a State governmental agency, that the tax here in question, in my opinion, cannot be sustained.

I am authorized to say that the CHIEF JUSTICE and Mr. Justice PECKHAM concur in this dissent.

True copy.

Test:

Clerk Supreme Court, U. S.